

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1227 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SATISHKUMAR RAMESHCHANDRA AHIR

Versus

V H SHAH

Appearance:

NANAVATY ADVOCATES for Petitioner

Mr. T.H.Sompura, ASSTT. GOVERNMENT PLEADER for
Respondent no. 1.

MR GM JOSHI for Respondent No. 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 14/11/97

ORAL JUDGEMENT

Satishkumar Rameshchandra Ahir, a
resident of Junagadh has filed the present petition to
challenge the order passed by the Director of
Municipalities, respondent no. 1 herein, on 3rd February,
1997 under section 37 of the Gujarat Municipalities Act,

1963.

2. The petitioner is a resident of Junagadh and he contested municipal election of Junagadh Municipality held in 1994 as Congress (I) candidate. Then he became President of Junagadh Municipality and at that time, Congress party was ruling the State of Gujarat. In March, 1995 B.J.P. formed Government in the State of Gujarat. It is the claim of the present petitioner that as he belongs to Congress (I) party and B.J.P. wanted to have the control over Junagadh Municipality, the State Government initiated proceedings against him. The proceedings against the petitioner was initiated under Essential Commodities Act, 1980 and he was detained by an order passed under section 3(2) of the Prevention of Black-marketing and Maintenance of Essential Commodities Act, 1988. Thereafter, the show cause notice was issued to him under section 37 of the Gujarat Municipalities Act, 1963 to show cause why he should not be removed as municipal councillor by exercising powers under section 37 of the said Act of 1963. The petitioner gave a detail reply regarding said show cause notice and had contended that the said action against him was malafide and not tenable in law. He had also cited before the respondent no. 2 case of Chimanbhai Patel vs. Anand Municipality and others reported in 1983(1) GLR, 67 in support of his contention that action initiated against him under section 37 is illegal and untenable.

3. But all the contentions raised by him were negatived by the respondent no. 2 and by his order dated 3rd February, 1997 he removed the petitioner by passing the following order:

"I, Shri V.H.Shah, I.A.S., Director of Municipalities, Gujarat State, Ahmedabad hereby hold the present elected member Shri Satischandra Rameshchandra Aahir (who has also been elected as the President on 15.1.1997 after hearing) of Junagadh Municipality, guilty of disgraceful conduct under section 37 of the Gujarat Municipalities Act, 1963 and hereby order to remove him from the member of Junagadh Municipality under section 37(1) of the Gujarat Municipalities Act. On his removal from the membership of Junagadh Municipality, other posts of Municipality being enjoyed by him will also have appropriate effect in accordance with provisions of law. This order shall come into force with immediate effect."

Being aggrieved by the said decision, the petitioner has come before this Court.

4. In order to decide the controversy raised in this matter, it is necessary to refer to certain provisions of Gujarat Municipalities Act, 1963. The action initiated and taken against the present petitioner is taken under section 37 of the Gujarat Municipalities Act, 1963 which runs as under:

"37. (1) The State Government may remove from office-

(a) any councillor of a municipality, (on its own motion or on receipt of) a recommendation of the municipality in that behalf supported by a majority of the total number of the then councillors of the municipality, or

(b) any president or vice-president of a municipality,

if, after giving the councilor, president or as the case may be, vice-president an opportunity of being heard and giving due notice in that behalf to the municipality and after making such inquiry as it deems necessary, the State Government is of the opinion that the councillor, president or as the case may be, vice-president has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under this Act.

(2) A president or vice-president removed under sub-section (1) shall not be eligible for re-election as a president or vice-president during the remainder of the term of the municipality."

Now, if the above provisions of section 37 are taken into consideration, then it would be quite clear that the State Government has got discretionary power to remove a councillor if he has been guilty of misconduct in discharge of his duties as councillor or has been guilty of any disgraceful conduct as a municipal councillor. As per the allegations made against the present petitioner in the show cause notice and as per the order passed by the respondent no. 2, the present petitioner is not alleged to have committed any misconduct pertaining to his functioning as President in performance of his duties as a municipal councillor. What is alleged against the present petitioner is that

the present petitioner was involved in a proceeding under the Prevention of Black-marketing and Maintenance of Supply of Essential Commodities Act, 1980 and was ordered to be detained in Godhra sub-jail and during the said proceeding, he was also declared as an absconder by the Collector. Then it is further alleged that the present petitioner was involved in two prosecutions alleged to be pertaining to the offences punishable under sections 424, 465, 468, 474, 473, 475. 477-A and 120-B of the Indian Penal Code. Admittedly, the said prosecutions lodged against the present petitioner are alleged to have taken place on account of falsification of some accounts, bills as well as tampering of orders of Sales Tax Department by a firm of which the petitioner is one of the partners. Admittedly, those offences were registered in the year 1993, i.e. before the present petitioner contested the election and neither petitioner was arrested nor chargesheet was filed against him till 1996 and the petitioner's trial is yet to take place. It is the claim of the petitioner that he has been falsely implicated in those prosecutions in order to see that he is removed from being a municipal councillor. It is not at all necessary for me to go into the details of the said claim of the petitioner. But it is necessary to mention here that as per the Indian law, every accused is presumed to be innocent till his guilt is proved. Therefore, merely because there is a registration of offences against the petitioner, it is not possible to hold that the petitioner is guilty of misconduct which is the subject matter of the said prosecution.

5. While considering the action under section 37 it is also necessary to refer to the provisions of sections 11, 38 and 40 of the said Act of 1963. Section 11(1) is the relevant provision for consideration of the issue before me. Section 11(1) reads as under:

"11(1) No person may be a councillor-

(a) Who-

(i) has, whether before or after the commencement of this Act, been convicted by a court in India-

(a) of an offence under (the Untouchability (Offences) ACT, 1955) or under the Bombay Prohibition Act, 1949; or

(b) of any other offence and sentenced to imprisonment for not less than six months,

unless a period of four years or such

lesser period as the State Government may allow in any particular case, has elapsed since his conviction and where he was sentenced to imprisonment, since his release; or

- (ii) as been removed from office under section 37 and four years have not elapsed from the date of such removal, unless he has, by an order which the State Government is hereby empowered to make, if it shall think fit, in this behalf, been relieved from the disqualification arising on account of such removal from office; or
- (b) who is an uncertificated bankrupt or an undischarged insolvent; or
- (c) who is of unsound mind and stands so declared by a competent court; or "

If emphasised portion of said section 11(1) is taken into consideration, then it would be quite clear that the action under section 37 is equated by the legislature with a conviction of a person with imprisonment for not less than six months. Therefore, sub-section (1) is laying down that a person who has been removed under section 37 would stand disqualified for becoming a councillor, by treating his removal equivalent to conviction of a person with a sentence and imprisonment not less than six months. Therefore, it would not be either just or proper to allow the State to take action under section 37 merely because there happened to be a registration of the offence.

6. The provision of section 40 of the said Act of 1963 run as under:

"40(1) The State Government or any officer authorised by it, may suspend from office a president or vice president against whom any criminal proceedings in respect of any offence alleged to have been committed by him under the Prevention of Corruption Act, 1947 or the Bombay Prohibition Act, 1949 or while acting or purporting to act in the discharge of his duties under this Act have been instituted or who has

been detained in a prison during trial under the provisions of any law for the time being in force.

(2) Should a president or vice-president be suspended under sub-section (1) a councillor shall be elected to perform all the duties and exercise all the powers of a president or, as the case may be, vice-president during the period for which such suspension continues.

(3) An appeal shall lie to the State Government against an order passed by the authorised officer under sub-section (1). Such appeal shall be made within a period of thirty days from the date of the order."

If the said provisions are considered, then it would be quite clear that under the said section, only in case if there is a prosecution of a President or vice-president either under Prevention of Corruption Act or under the Bombay Prohibition Act, then the President or Vice-president could be suspended. There also, it has been clearly mentioned that if the president or vice-president is involved in criminal proceeding pertaining to an act in discharge of his duties under the Act, then alone action for suspension could be taken. Thus, section 40 of the said Act, 1963 lays down that suspension of a person could be there only in cases of a prosecution on account of failure to discharge his duties as president or vice-president or on account of an allegation of commission of offence either under Prevention of Corruption Act or under Bombay Prohibition Act. Therefore, it is neither just nor proper to hold that merely because of the registration of the offence under any other Act, a councillor or president or vice-president could be removed by the State Government.

7. At the cost of repetition, it must be said that it is not the claim of the respondents that the present petitioner has committed any disgraceful act as a councillor or as President. Even accepting the act alleged as disgraceful act, it is admittedly not an act in connection with his duties, either as president or as councillor of municipality as the allegations made against him are for the alleged act under Indian Penal Code and Essential Commodities Act, 1955. As regards proceedings taken against him under Essential Commodities Act from the Annexure "B", it would be quite clear that the said proceeding has been quashed by this High Court on 22.2.96. Thus, when this action was initiated against

him and when the order in question is passed by the respondent no. 2, the said action under Essential Commodities Act was not in existence. The approach of respondent no. 2 in observing that the said decision of this Court in Special Civil Application no. 136 of 1996 decided on 22.2.1996 is not binding on him is not at all justified and such an attitude on his part must be deprecated. When once High Court has quashed the said proceedings, the respondent no. 2 was not at all justified in relying on the said proceeding and to take action under section 37 of the Act.

8. As regards other two prosecutions, at the cost of repetition, it must be said that there is only registration of offences. The trial for the said offence is yet to take place. Merely because there is a registration of the offences, it is not at all possible to hold that the petitioner is guilty of misconduct which is a subject matter of the said prosecution. No doubt, the learned Single Judge of this Court in the case of Anishbhai Ismail vs. State AIR 1995, Gujarat, 118 has held that for removal of a member of the Panchayat under section 49 of the Gujarat Panchayats Act, 1961, disgraceful conduct need not be in discharge of the official duties so as to disqualify him as member. At the outset, it must be said that before the learned Single Judge of this Court, the decision of the Division Bench in the case of Chimanlal Patel vs. Anand Municipality and others 1983(1) GLR, 67 was not cited. Therefore, he had no occasion to consider the said decision. Now, apart from this, if the facts of the said case are taken into consideration, then it would be quite clear that in that case, it was the claim of the Government that the petitioner was involved in serious irregularities as member of Panchayat and was involved in the offences. So, it was not a simpliciter case of misconduct and mere involving in a criminal offences. It is also necessary to mention here that the order of removal was passed by the District Panchayat of Panchamahals district by a unanimous resolution in that case. Therefore, observations of the learned Single Judge will have to be taken into consideration along with those facts of that case.

9. The division bench of this Court in the case of Chimanlal Patel vs. Anand Municipality reported in 1983(1) GLR, 67 has clearly laid down that when any action is to be taken against the municipal councillor for the alleged misconduct, that alleged misconduct must have some nexus with his duties as a municipal councillor. That would be quite clear from the following

observations on page nos. 72, 73 and 77.

"The test, therefore, is clearly objective. The procedure to be followed for removal is quasi-judicial in nature because sub-section (1) of section 37 itself provides that the removal can be ordered after giving the Councillor, President or Vice-President, as the case may be, an opportunity of being heard and giving due notice in that behalf to the Municipality and after making such inquiry as the State Government deems necessary. It is only after this procedure is followed that the State Government becomes competent to form an opinion as to whether the Councillor, President or Vice President, as the case may be, has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under the Act. On a plain reading of this provision it is clear that the removal is from the office held by the concerned person at the relevant point of time. The act of misconduct or disgraceful conduct or the incapacity must relate to the office of which he is sought to be stripped under the aforesaid provision. In other words, if a person has abused his powers as the President, he can be removed from that office, but not also from the office of a Municipal councillor. In a given case, the duties may overlap in which case the incumbent can perhaps be removed from both the offices. However, where the duties to be performed are distinct or attached to a particular office and can only be performed by a person holding that office, then it is obvious that he can be removed from that office on the ground that he misconducted himself while discharging his duties pertaining to that particular office. Therefore, a person who misconducts himself or conducts himself in a disgraceful manner while performing his duties as a President or a Chairman of a Committee constituted by the Municipality under the Act can be removed from the office of the President or Chairman, as the case may be, but it seems difficult to hold that he can also be removed from the office of Municipal Councillor even though the alleged misconduct or disgraceful conduct was not referable to anything done in the discharge of duties as a Municipal Councillor.

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allowed and the order passed by the respondent no. 2
dated 6.2.1997 is hereby quashed and set aside. Rule is
made absolute accordingly with no order as to costs.

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